

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OXFORD HEALTH INSURANCE, INC., OXFORD
HEALTH PLANS (NY), INC., UNITED
HEALTHCARE INSURANCE COMPANY OF
NEW YORK, INC. and UNITED HEALTHCARE
SERVICES, INC.,

Civil. Action No.
13-CV-375 (AKH)(KNF)

Plaintiffs,
-against-

**DOCUMENT
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FILED**

DANIEL HAMNER, M.D., DANIEL HAMNER
PHYSICIAN, P.C., DANIEL HAMNER, M.D., P.C.,
ALLAN CHRISTOPHER AS EXECUTOR FOR
THE ESTATE OF ANNE M. CHRISTOPHER,
RICHARD HAMNER, ERIKA MACBRIDE,
RAINA HAMNER and RAE BAYMILLER,

Defendants.
-----X

**PLAINTIFFS' REPLY IN FURTHER SUPPORT OF
THEIR CROSS-MOTION FOR COSTS AND ATTORNEY'S FEES**

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PRELIMINARY STATEMENT

Plaintiffs Oxford Health Insurance, Inc., Oxford Health Plans (NY), Inc., United Healthcare Insurance Company of New York, Inc. and United HealthCare Services, Inc. (collectively referred to herein as “Plaintiffs”), respectfully submit this Reply Memorandum of Law in response to Defendant Allan Christopher as Executor for the Estate of Anne M. Christopher’s (the “Executor”) opposition and in further support of their cross-motion for the reasonable costs and attorney’s fees incurred in having to formally effectuate service upon the Executor and oppose his vexatious motion for reconsideration.

ARGUMENT

POINT I

**PLAINTIFFS ARE ENTITLED TO THE REASONABLE
COSTS AND ATTORNEY’S FEES ASSOCIATED WITH EFFECTUATING
FORMAL SERVICE OF PROCESS ON THE EXECUTOR UNDER RULE 4(d)(2)**

Plaintiffs demonstrated that they mailed a waiver of service to the Executor’s counsel in accord with Rule 4(d)(1), FED. R. CIV. P. The Executor’s counsel, Richard Pu, concedes that he received the waiver and then argues that he should be excused from refusing to execute the waiver of service because his client did not authorize him to accept service. Initially, this argument is entirely inconsistent with his prior filings. In his motion to dismiss, Mr. Pu stated “[b]ut Pu failed to accepted {sic} service and, instead, made the instant motion.” (Doc. No. 42, p. 5). Accordingly, Mr. Pu admitted that it was his failure to accept service.

Regardless of whether it was Mr. Pu or the Executor’s decision to refuse to accept service of process, it still does not excuse the breach of his “duty to avoid unnecessary expenses of serving the summons.” FED. R. CIV. P. 4(d)(1). The Executor has failed to provide any reason, reasonable or otherwise, for refusing to execute the waiver of service.

Moreover, the Executor compounded his failure to return the waiver of service with vexatious motion practice. The Executor filed a motion to dismiss for insufficient service of process based on reasoning that the Court already rejected. (Doc. No. 42). Even after that was resolved against him, he filed a motion to reargue the issue of service. (Doc. No. 60). This Court ruled that the basis for the reconsideration motion was “meritless.” (Doc. No. 64).

CONCLUSION

For the reasons set forth in their initial Memorandum of Law and the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs’ cross-motion for costs and attorney’s fees under Rule 4(d)(2), FED. R. CIV. P.

Dated: New York, New York
October 28, 2013

Respectfully submitted,

SEDGWICK LLP

s/ Michael H. Bernstein
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CERTIFICATE OF SERVICE

I, Michael H. Bernstein, hereby certify and affirm that a true and correct copy of the attached **Plaintiffs' Reply Memorandum of Law in Support of Its Cross-Motion for Costs and Attorney's Fees** was served via ECF on October 28, 2013, upon the following:

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Dated: New York, New York
October 28, 2013

s/ Michael H. Bernstein
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